

**FILED**

SEP - 2 2008

CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
BY *MA* DEPUTY

UNITED STATES OF AMERICA,  
Plaintiff,  
v.  
HENRI LOPEZ-CARDONA,  
Defendant.

**STIPULATION OF FACT AND JOINT  
MOTION FOR RELEASE OF  
MATERIAL WITNESS(ES) AND  
ORDER THEREON**

**IT IS HEREBY STIPULATED AND AGREED** between the plaintiff, UNITED STATES OF AMERICA, by and through its counsel, Karen P. Hewitt, United States Attorney, and Carla J. Bressler, Assistant United States Attorney, and defendant HENRI LOPEZ-CARDONA, by and through and with the advice and consent of defense counsel, John D. Kirby, that:

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CJB:es

1           2.       Defendant acknowledges receipt of a plea agreement in this case and agrees to  
2 provide the signed, original plea agreement to the Government not later than five business days  
3 before the disposition date set by the Court.

4           3.       Defendant agrees to plead guilty to the charge pursuant to the plea agreement on or  
5 before September 17, 2008.

6           4.       The material witnesses, Omar Eduardo Ordonez-Monroy, Francisco Vargas-Gonzales  
7 and Joe Daniel-Leal, in this case:

8               a.       Are aliens with no lawful right to enter or remain in the United States;

9               b.       Entered or attempted to enter the United States illegally on or about  
10 August 16, 2008;

11              c.       Were found in rural terrain near the international border with Mexico and  
12 were being guided by defendant, and defendant knew of the fact that they were aliens with no lawful  
13 right to enter or remain in the United States;

14              d.       Were paying and undisclosed amount of money to \$1,300 to others to be  
15 brought into the United States illegally and/or transported illegally to their destination therein; and,

16              e.       May be released and remanded immediately to the Department of Homeland  
17 Security for return to their country of origin.

18           5.       After the material witnesses are ordered released by the Court pursuant to this  
19 stipulation and joint motion, if defendant does not plead guilty to the charge set forth above, for any  
20 reason, or thereafter withdraws his guilty plea to that charge, defendant agrees that in any proceeding,  
21 including, but not limited to, motion hearings, trial, sentencing, appeal or collateral attack, that:

22              a.       The stipulated facts set forth in paragraph 4 above shall be admitted as  
23 substantive evidence;

24              b.       The United States may elicit hearsay testimony from arresting agents  
25 regarding any statements made by the material witness(es) provided in discovery, and such testimony  
26 shall be admitted as substantive evidence under Fed. R. Evid. 804(b)(3) as statements against interest  
27 of (an) unavailable witness(es); and,

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Material Witness(es) And Order Thereon in  
United States v. Henri Lopez-Cardona

1 c. Understanding that under Crawford v. Washington, 124 S. Ct. 1354 (2004),  
2 "testimonial" hearsay statements are not admissible against a defendant unless defendant confronted  
3 and cross-examined the witness(es) who made the "testimonial" hearsay statements, defendant  
4 waives the right to confront and cross-examine the material witness(es) in this case.

5 6. By signing this stipulation and joint motion, defendant certifies that defendant has  
6 read it (or that it has been read to defendant in defendant's native language). Defendant certifies  
7 further that defendant has discussed the terms of this stipulation and joint motion with defense  
8 counsel and fully understands its meaning and effect.

9 Based on the foregoing, the parties jointly move the stipulation into evidence and for the  
10 immediate release and remand of the above-named material witness(es) to the Department of  
11 Homeland Security for return to their country of origin.

12 It is STIPULATED AND AGREED this date.

13 Respectfully submitted,

14 KAREN P. HEWITT  
15 United States Attorney

16 Dated: 9/2/2008.

  
17 CARLA J. BRESSLER  
18 Assistant United States Attorney

19 Dated: 8/25/08.

  
20 JOHN D. KIRBY  
21 Defense Counsel for Lopez-Cardona

22 Dated: 8/23/08.

  
23 HENRI LOPEZ-CARDONA  
24 Defendant  
25  
26  
27

**ORDER**

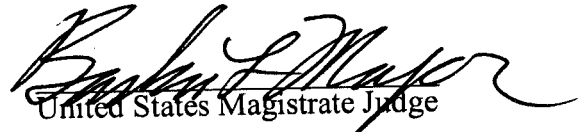
Upon joint application and motion of the parties, and for good cause shown,

**THE STIPULATION** is admitted into evidence, and,

**IT IS ORDERED** that the above-named material witness(es) be released and remanded forthwith to the Department of Homeland Security for return to their country of origin.

**SO ORDERED.**

Dated: 9/2/08

  
United States Magistrate Judge